

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

<b>DAVID LAMONT MORGAN,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. CIV-12-379-RAW</b>
	)	
<b>JERRY L. TOMLINSON, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**ORDER**

Before the court is the motion of plaintiff for default judgment as to Durant Daily Democrat newspaper, Amanda Wells and John Hicks. A response to the motion has been filed by Heartland Publications L.L.C., which states that it is the owner of the Durant Daily Democrat. Within the response, defendant sets forth plausible factual reasons for its delay in answering the complaint. Because the court favors resolving cases on the merits, default judgments are disfavored. *See Gomes v. Williams*, 420 F.2d 1364, 1366 (10<sup>th</sup> Cir.1970). Accordingly, the motion will be denied as to the Durant Daily Democrat.\*

As to the defendants Wells and Hicks, it appears they have been served and have not answered. In such circumstance, a plaintiff must first seek the court clerk's entry of default pursuant to Rule 55(a) F.R.Cv.P. *See Southern Geo-Environmental Consultants, Inc. v. Herzog*, 2009 WL 2766209 (S.D.Ala.2009)(collecting cases). As to those defendants, the motion will be denied without prejudice.

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\*In any event, the court granted the defendant's motion to dismiss by order no. 71.

It is the order of the court that the motion for default judgment (#37) is denied as to Durant Daily Democrat newspaper and is denied without prejudice as to Manda Wells and John Hicks.

Plaintiff's other pending motions (##25, 40, 60 and 61) are hereby denied.

**ORDERED THIS 11<sup>th</sup> DAY OF OCTOBER, 2013.**

A handwritten signature in cursive script, reading "Ronald A. White", written in black ink.

Ronald A. White  
United States District Judge  
Eastern District of Oklahoma